

P.C. MISHRA

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v.

STATE (C.B.I.) & ANR.

(Criminal Appeal No. 1310 of 2010)

MARCH 27, 2014

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[K.S. RADHAKRISHNAN AND VIKRAMAJIT SEN JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

s. 306 r/w s. 460 (g) - Power of Magistrate to grant pardon to accomplice during investigation before submission of charge-sheet - Held: During investigation, both, Special Judge as well as the Magistrate acting u/s 306, have concurrent jurisdiction to entertain application of pardon, which facilitates proper investigation of crime - In a case, where Magistrate has exercised his jurisdiction u/s 306 even after appointment of a Special Judge under PC Act and has passed an order granting pardon, the same is only a curable irregularity, in terms of s. 460 (g) Cr.P.C., which will not vitiate the proceedings, provided the order is passed in good faith - However, after committal of the case, pardon granted by Magistrate is not a curable irregularity - In the instant case, there is no error in Special Judge directing the Magistrate to pass appropriate orders on the application of CBI in granting pardon to second respondent so as to facilitate the investigation - Code of Criminal Procedure, 1898 - s. 337.

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The instant appeal arose out of the order dated 2.11.1996 passed by the Metropolitan Magistrate granting pardon to the second respondent in a case u/s 7 of the Prevention of Corruption Act, 1988 (PC Act) against him and the main accused, namely, the appellant. The said order attained finality. Later, charges were framed u/ss 7 and 13(1)(d) read with s. 13(2) of the PC Act against the appellant by order dated 8.2.2000. During the trial in the

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A Court of Special Judge when evidence had been concluded as against the appellant and the second respondent had been examined as PW9 by the prosecution and cross-examined by the appellant, the latter moved an application under the proviso to s. 234 Cr.P.C. before the Special Judge on 24.7.2008, questioning the pardon granted to second respondent by the Metropolitan Magistrate on 2.11.1996. The Special Judge rejected the application. The High Court dismissed the appellant's revision petition.

C In the instant appeal, the issue that arose for consideration before the Court was the correctness of the order passed by the Magistrate in granting pardon, exercising powers u/s 306 Cr.P.C. during the course of investigation of the case and before the submission of the charge-sheet before the Special Judge.

Dismissing the appeal, the Court

E HELD: 1.1 The power to grant pardon enjoined u/s 306 Cr.P.C. is a substantial power and the reasons for tendering pardon must be recorded. It is for the prosecution to ask that a particular accused, out of several, may be granted pardon, if it thinks that it is necessary in the interest of successful prosecution of other offenders or else the conviction of those offenders would not be easy. [para 11] [193-F-G]

G *Kanta Prashad v. Delhi Administration* 1958 SCR 1218 = AIR 1958 SC 350 and *State of U.P. v. Kailash Nath Agarwal and others* 1973 (3) SCR 728 = (1973) 1 SCC 751 -- relied on.

A. Devendran v. State of Tamil Nadu 1997 (4) Suppl. SCR 591 = (1997) 11 SCC 720 - referred to.

H 1.2 During investigation, both the Special Judge as

well as the Magistrate acting u/s 306 Cr.P.C. have concurrent jurisdiction to entertain application of pardon, which facilitates proper investigation of the crime. But, after the committal of the case, the pardon granted by the Magistrate is not a curable irregularity. [para 14] [195-E-F]

Bangaru Laxman v. State (through CBI) and another 2011 (13) SCR 268 = (2012) 1 SCC 500 - referred to.

1.3 In a case, where the Magistrate has exercised his jurisdiction u/s 306 Cr.P.C. even after the appointment of a Special Judge under the PC Act and has passed an order granting pardon, the same is only a curable irregularity, in terms of s. 460 (g) Cr.P.C., which will not vitiate the proceedings, provided the order is passed in good faith. In fact, in the instant case, the Special Judge himself has referred the application to Chief Metropolitan Magistrate/Metropolitan Magistrate to deal with the same since the case was under investigation. [para 15 - 16] [195-H; 196-D-E]

1.4 In the circumstances, there is no error in Special Judge directing the Chief Metropolitan Magistrate or the Metropolitan Magistrate to pass appropriate orders on the application of CBI in granting pardon to second respondent so as to facilitate the investigation. [para 17] [196-F]

A.R. Antulay v. Ramdas Srinivas Nayak and another 1984 (2) SCR 914 = (1984) 2 SCC 500; *Dilawar Singh v. Parvinder Singh alias Iqbal Singh and another* 2005 (5) Suppl. SCR 83 = (2005) 12 SCC 709 and *Harshad S. Mehta and others v. State of Maharashtra* 2001 (2) Suppl. SCR 577 = (2001) 8 SCC 257 - cited

Case Law Reference:

2011 (13) SCR 268 referred to para 7

1984 (2) SCR 914 cited para 7

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A	2005 (5) Suppl. SCR 83	cited	para 7
	2001 (2) Suppl. SCR 577	cited	para 7
	1997 (4) Suppl. SCR 591	referred to	para 10
B	1958 SCR 1218	relied on	para 11
	1973 (3) SCR 728	relied on	para 11

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1310 of 2010.

C From the Judgment and Order dated 06.11.2008 of the
High Court of Delhi at New Delhi in Criminal M.C. No. 3514 of
2008.

Appellant-in-person.

D Rajiv Nanda, C.K. Sharma, B.V. Balaram Das, V. Mohana
for the Respondents.

The Judgment of the Court was delivered by

E **K.S. RADHAKRISHNAN, J.** 1. We are, in this appeal,
concerned with the question whether the pardon granted by the
Metropolitan Magistrate, Tis Hazari, Delhi, under Section 306
Cr.P.C. to the second Respondent, against whom R.C.
No.15(A) 96 DLI dated 29.2.1996 under Section 7 of the
F Prevention of Corruption Act, 1988 was registered by the
Central Bureau of Investigation, is legally sustainable.

G 2. The Central Bureau of Investigation (CBI) registered
R.C. No.15(A) 96 DLI dated 29.2.1996 under Section 7 of the
Prevention of Corruption Act, 1988 (for short "PC Act") on
receipt of a written complaint on 29.2.1996 from Gulshan Sikri,
proprietor of M/s Filtrex India, Nangal Raya, New Delhi, against
P.C. Mishra, the then Assistant Commissioner of Sales Tax
(Appeals), Appellant herein, for demanding Rs.4,000/- as bribe
for settling the appeal filed against the order of Sales Tax
H Officer.

3. CBI, on 1.3.1996, laid a trap and the accused, PC Mishra, and his Reader Ravi Bhatt, second Respondent herein, were caught red-handed while demanding and accepting the bribe from the complainant. Both the accused persons were arrested by the CBI on 1.3.1996 and, during the course of investigation, an application was filed by the co-accused Ravi Bhatt before the Special Judge, CBI, for recording his confessional statement under Section 164 Cr.P.C., which was marked by Special Judge to the Chief Metropolitan Magistrate, who assigned the same to the Metropolitan Magistrate and the statement of second Respondent under Section 164 Cr.P.C. was recorded on 7.8.1996. During the course of investigation, the witnesses had been examined and records scrutinized and it transpired that the co-accused Ravi Bhatt had accepted the bribe money for and on behalf of the Appellant. The CBI, on investigation, noticed that the second Respondent was not a leading accused in the case and it was considered necessary to take him as an approver to prove the various missing links in the chain of circumstantial evidence, which was otherwise not available to the investigating agency. Consequently, the CBI on 24.10.1996 filed an application under Section 306 Cr.P.C. before the Special Judge, Tis Hazari, Delhi for grant of pardon to the second Respondent, Ravi Bhatt. The Special Judge marked that application to the learned Chief Metropolitan Magistrate for the said purpose, who, in turn, marked the same to the Metropolitan Magistrate.

4. The Metropolitan Magistrate examined the application of the CBI and passed an order dated 2.11.1996, in exercise of powers conferred under Section 306 Cr.P.C., holding that it was a fit case where pardon should be granted to the second accused to enable the prosecution to unveil all circumstances of the case and to unearth the truth, stating the following reasons :

"Accused Sh. Ravi Bhatt is a privy to the offence. He is not the principal/leading accused in this case. It is not

A mentioned in the written complaint of the complainant that
 accused Sh. Ravi Bhatt demanded Rs.4000/- from him.
 The role played by him, however, is minimal. Considering
 that the matter relates to corruption in the Government
 Department and no direct independent evidence is
 B available, I think it appropriate to obtain evidence of the
 accused, Sh. Ravi Bhatt in order to prove the various
 missing links in the chain of the circumstantial evidence
 which are not otherwise available to the investigating
 agency. The offence mentioned in the FIR is triable
 C exclusively by the Court of a Special Judge appointed
 under the Criminal Law Amendment Act, 1952 (46 of
 1952)."

5. The above mentioned order was not challenged and
 has attained finality. Later, charges were framed under
 D Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act
 against the Appellant vide order dated 8.2.2000 after getting
 sanction. Trial proceeded in the Court of Special Judge and
 evidence was concluded as against the Appellant. Second
 Respondent, Ravi Bhatt, was examined as PW9 by the
 E prosecution and was also cross-examined by the Appellant.

6. The Appellant moved an application under the proviso
 to Section 234 Cr.P.C. for the first time, before the Special
 Judge on 24.7.2008, questioning the pardon granted to second
 F Respondent by the learned Metropolitan Magistrate on
 2.11.1996 in exercise of powers conferred under Section 306
 Cr.P.C. It was contended that the pardon could have been
 granted only by the Special Judge under Section 5(2) of the
 PC Act and not by the Metropolitan Magistrate, being not a
 designated Court under the PC Act. It was also contended that
 G the Magistrate did not have any power to grant pardon. The
 Special Judge rejected the application vide order dated
 31.10.2008 holding that the Metropolitan Magistrate had the
 power to grant pardon during investigation under Section 306
 H Cr.P.C. and even if the Magistrate was not empowered by law

to tender a pardon and the order was passed in good faith, then such an order is protected under Section 460 Cr.P.C. Aggrieved by the same, the Appellant filed Criminal Revision being CrI. M.C. No.3514 of 2008 before the High Court of Delhi, which was dismissed by the High Court vide its order dated 6.11.2008, against which this appeal has been preferred.

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7. Shri P.C. Mishra, the Appellant, appeared in person and submitted that the learned Metropolitan Magistrate has committed a grave error in granting pardon to the second Respondent, that too, without hearing him. Shri Mishra submitted that the order passed by the learned Metropolitan Magistrate on 2.11.1996 is without jurisdiction, since no power is conferred on him to grant pardon to second Respondent as the matter is already seized before the Special Judge appointed under Section 3 of the PC Act. It was pointed out that Section 5(2) of the PC Act deals with all matters pertaining to offences under the Prevention of Corruption Act, starting from registration of FIR to passing of final judgment. Consequently, it was only Special Judge, who could have granted pardon to the second Respondent and not the Metropolitan Magistrate. Shri Mishra also placed considerable reliance on the Constitution Bench judgment of this Court in *A.R. Antulay v. Ramdas Srinivas Nayak and another* (1984) 2 SCC 500 and various other decisions in support of his contention. Further, it was pointed out that the Special Act lays down some procedure under which the Special Judge has to function and no other procedure, apart from what has been prescribed by the PC Act, could be followed. In support of his contention reliance was placed on the judgment of this Court in *Dilawar Singh v. Parvinder Singh alias Iqbal Singh and another* (2005) 12 SCC 709 to emphasise the power of the Special Judge under Section 5(2) of the PC Act. Reliance was also placed on the judgment of this Court in *Harshad S. Mehta and others v. State of Maharashtra* (2001) 8 SCC 257 and *Bangaru Laxman v. State (through CBI) and another* (2012) 1 SCC 500. It was also pointed out that since the issue with regard to the jurisdiction

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A could be raised at any point of time, the contention of the Respondents that the order of 1996 was challenged only in the year 2008 cannot be sustained. Further, it was also pointed out that the learned Metropolitan Magistrate had granted pardon under Section 306 Cr.P.C. without issuing notice to the
B Appellant which has caused serious prejudice to him.

8. Shri Rajiv Nanda, learned counsel appearing for the CBI, submitted that the application for pardon could be moved by the prosecution at the stage of investigation, till its culmination and in the instant case the application for pardon was moved
C by the prosecution at the stage of investigation and that too after recording the statement of Ravi Bhatt under Section 164 Cr.P.C. Learned Metropolitan Magistrate, it was pointed out, has exercised his jurisdiction to grant pardon under Section 306
D Cr.P.C. at the investigation stage. The Special Judge, in the instant case, had directed the Chief Metropolitan Magistrate or the Metropolitan Magistrate to deal with the application for pardon, since the case was at the investigation stage. In any view, it was submitted, even if there was some irregularity in the order passed by the Metropolitan Magistrate, that irregularity
E was a curable irregularity in view of Section 460(g) Cr.P.C.

9. Ms. V. Mohana, learned Amicus Curiae addressed elaborate arguments on the scope of Sections 306 and 460 Cr.P.C. as well as the powers of the Special Judge under
F Section 5(2) of the PC Act. Learned Amicus Curiae pointed out that power of the Magistrate during investigation to grant pardon is not taken away or deprived by the provisions of the PC Act. In any view, the order passed by the Metropolitan Magistrate is protected under Section 460(g) Cr.P.C. since the
G Magistrate had acted bona fide and in good faith. Learned Amicus Curiae also submitted, assuming that the Special Judge under the PC Act also has power to grant pardon during investigation, that will not take away the inherent powers on the
H Magistrate during investigation to grant pardon while exercising powers under Section 306 Cr.P.C. Learned Amicus Curiae

further submitted that the order granting pardon was passed as early as on 2.11.1996, which was revisable and, since no revision had been filed, the order had attained finality and hence the same could not have been challenged by the Appellant at the fag end of the trial, in which, it was pointed out, he had been convicted by the Special Judge vide his judgment dated 24.5.2010.

10. We are, in this appeal, concerned with the correctness or otherwise of the order passed by the Magistrate in granting pardon exercising powers under Section 306 Cr.P.C. during the course of investigation of the case and before the submission of the charge-sheet before the Special Judge. The CBI, as already stated, had filed an application for grant of pardon before the Special Judge at a stage when investigation was going on and the Special Judge, in its wisdom, thought it appropriate that the application be dealt with by the Chief Metropolitan Magistrate, since investigation was not over and charge-sheet was not submitted before him. The Chief Metropolitan Magistrate, however, assigned the matter to the Metropolitan Magistrate. Situation would have been different if the investigation was over, charge-sheet had been submitted and the charges were framed against the accused. In our view, at the stage of investigation, the power conferred on the Magistrate under Section 306 Cr.P.C. (Section 337 of Cr.P.C. 1898 Old Code) has not been taken away, even if the offence can ultimately be tried by a Special Judge. Section 306 Cr.P.C. is applicable in a case where the order of committal has not been passed, while Section 307 Cr.P.C. is applicable after the committal of the case before the judgment is pronounced. This Court in *A. Devendran v. State of Tamil Nadu* (1997) 11 SCC 720 opined that after committal of the case, the power to grant pardon vests in the Court to which the case has been committed and the pardon granted by the Chief Judicial Magistrate is not a curable irregularity. For easy reference, we refer to Section 306 Cr.P.C., which reads as follows :

A 306. Tender of pardon to accomplice.

B (1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

C (2) This section applies to-

- D (a) any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952);**
- E (b) any offence punishable with imprisonment which may extend to seven years or with a more severe sentence.**

F (3) Every Magistrate who tenders a pardon under sub-section (1) shall record-

- G (a) his reasons for so doing;**
- (b) whether the tender was or was not accepted by the person to whom it was made, and shall, on application made by the accused, furnish him with a copy of such record free of cost.**

H (4) Every person accepting a tender of pardon made under sub-section (1)-

(a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;

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(b) shall, unless he is already on bail, be detained in custody until the termination of the trial.

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(5) Where a person has, accepted a tender of pardon made under sub-section (1) and has been examined under sub-section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case,-

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(a) commit it for trial-

(i) to the Court of Session if the, offence is triable exclusively by that Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;

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(ii) to a Court of Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952), if the offence is triable exclusively by that Court;

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(b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself."

11. Power to grant pardon enjoined under Section 306 Cr.P.C. is a substantial power and the reasons for tendering pardon must be recorded. It is for the prosecution to ask that a particular accused, out of several, may be granted pardon, if it thinks that it is necessary in the interest of successful prosecution of other offenders or else the conviction of those offenders would not be easy. This Court in *State of U.P. v. Kailash Nath Agarwal and others* (1973) 1 SCC 751 recognised the power of the District Magistrate to grant pardon at the investigation stage. This Court in *Kanta Prashad v. Delhi Administration* AIR 1958 SC 350 had the occasion to examine the scope of Section 337 and 338 of the old Code (Cr.P.C. 1898) vis-à-vis the powers of a Special Court constituted under

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- A the Criminal Law (Amendment) Act, 1952. This Court held that, reading the proviso to Section 337 and provisions of Section 338 together, the District Magistrate is empowered to tender a pardon even after a commitment, if the Court so directs. It was also held that under Section 8(2) of the Criminal Law
- B (Amendment) Act, 1952, the Special Judge has also been granted power to tender pardon. The conferment of this power on the Special Judge in no way deprives the District Magistrate of his power to grant a pardon under Section 337 of the Code. It was held if at the time when the District Magistrate tenders
- C the pardon, the case was not before the Special Judge, then there is no illegality committed by the District Magistrate.

12. The scope of above-mentioned provisions again came up for consideration before this Court in *Kailash Nath Agarwal* (supra), wherein this Court after referring to its earlier judgment in *Kanta Prashad* (supra) held as follows:-

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"It will be noted from this decision that emphasis is laid on the fact that the proviso to Section 337 contemplates concurrent jurisdiction in the District Magistrate and in the Magistrate making an inquiry or holding the trial to tender pardon. It is also emphasised that the conferment of the power to grant pardon on the Special Judge does not deprive the District Magistrate of his power to grant pardon under Section 337."

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13. In *Bangaru Laxman* (supra), this Court has stated that the power of Special Judge to grant pardon is an unfettered power and held that, while trying the offences, the Special Judge has dual power of a Special Judge as well as that of a Magistrate. This Court, while interpreting Section 5, then went on to say as follows :-

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40. Thus, on a harmonious reading of Section 5(2) of the PC Act with the provisions of Section 306, specially Section 306(2)(a) of the Code and Section 26 of the PC Act, this Court is of the opinion that the Special Judge

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under the PC Act, while trying offences, has the dual power of the Sessions Judge as well as that of a Magistrate. Such a Special Judge conducts the proceedings under the court both prior to the filing of charge-sheet as well as after the filing of charge-sheet, for holding the trial.

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41. Since this Court has already held that the Special Court is clothed with the magisterial power of remand, thus in the absence of a contrary provision, this Court cannot hold that power to grant pardon at the stage of investigation can be denied to the Special Court.

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42. In view of the discussion made above, this Court is of the opinion that the power of granting pardon, prior to the filing of the charge-sheet, is within the domain of judicial discretion of the Special Judge before whom such a prayer is made, as in the instant case by the prosecution."

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14. *Bangaru Laxman* (supra), therefore, emphasizes the concurrent jurisdiction of the Special Judge as well as the Chief Judicial Magistrate or Metropolitan Magistrate to grant pardon during investigation, but does not say that the Metropolitan Magistrate has no power under Section 306 Cr.P.C. to grant pardon during the investigation i.e. before filing of charge-sheet before the Special Judge. During investigation, in our view, both the Special Judge as well as the Magistrate acting under Section 306 Cr.P.C. have concurrent jurisdiction to entertain application of pardon, which facilitates proper investigation of the crime. But, as already indicated, after the committal of the case, the pardon granted by the Magistrate is not a curable irregularity.

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15. We may, in this regard, refer to Section 460 Cr.P.C. which refers to nine kinds of curable irregularities, provided they are caused erroneously and in good faith. Irregularity caused while granting pardon is dealt with in Section 460(g) Cr.P.C. The relevant part of that Section reads as follows :-

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A **"460. Irregularities which do not vitiate proceedings.**

If any Magistrate not empowered by law to do any of the following things, namely:-

B (g) to tender a pardon under section 306;
erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered."

C Section 461 Cr.P.C. speaks of irregularities which vitiate proceedings.

16. We have already held, both the Magistrate as well as the Special Judge has concurrent jurisdiction in granting pardon under Section 306 Cr.P.C. while the investigation is going on.
D But, in a case, where the Magistrate has exercised his jurisdiction under Section 306 Cr.P.C. even after the appointment of a Special Judge under the PC Act and has passed an order granting pardon, the same is only a curable irregularity, which will not vitiate the proceedings, provided the
E order is passed in good faith. In fact, in the instant case, the Special Judge himself has referred the application to Chief Metropolitan Magistrate/Metropolitan Magistrate to deal with the same since the case was under investigation. In such
F circumstances, we find no error in Special Judge directing the Chief Metropolitan Magistrate or the Metropolitan Magistrate to pass appropriate orders on the application of CBI in granting pardon to second Respondent so as to facilitate the investigation.

G 17. Appeal lacks merit and the same is dismissed.

R.P.

Appeal dismissed.